



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

201-15645

SEP 09 2004

OFFICE OF
PREVENTION, PESTICIDES AND
TOXIC SUBSTANCES

Mr. John H. Butala
Technical Advisor, Creosote Council II
No. 7 Glasgow Road
Gibsonia, PA 15044

Dear Mr. Butala:

Thank you for your letter dated November 29, 1999, to the U.S. Environmental Protection Agency (EPA), regarding the High Production Volume (HPV) Challenge Program. I apologize for the lengthy delay in responding to your request.

Your letter requests the removal of Creosote (CAS No. 8001-58-9) from the HPV Challenge Program Chemical List (HPV Chemical List) on the grounds that this substance is regulated under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and that data on creosote have been submitted to the Agency under FIFRA.

A chemical may be excluded from the definition of a chemical substance subject to TSCA subsection 3(2)(B) and Inventory Update Rule reporting requirements; however, that does not mean that it is always excluded from the HPV Challenge Program. Many chemicals used as pesticides also have TSCA related uses and are produced at levels that put them in the HPV Challenge Program. These uses and production levels would preclude EPA from removing the chemical(s) from the HPV Chemical List. Although creosote is a registered pesticide, it appears to also have uses that fall within the jurisdiction of TSCA. Specifically, creosote continues to be reported to the Inventory Update Rule (IUR) as recently as the 2002 reporting period. If this reporting was done in error, and all uses of creosote are FIFRA-regulated uses, then EPA recommends that companies amend their reporting under the IUR.

As you may know, EPA posted draft guidance on procedures for removing chemicals that are no longer HPV from the scope of the voluntary HPV Challenge Program on its ChemRTK website at www.epa.gov/chemrtk in March, 1999. Based on EPA's review of all the pertinent IUR data from 1998 and 2002, EPA has determined that Creosote (CAS No. 8001-58-9) **does not meet** the "no longer HPV" criteria. Since Agency records show that creosote is also still unsponsored, EPA encourages The Creosote Council to consider sponsoring the chemical or to encourage other companies regarding possible sponsorship of this chemical.

Although data on creosote has been performed and provided under FIFRA, that data may not be publicly available because of confidentiality claims. Public availability of data is a principle goal of the HPV Challenge Program and one that we are committed to achieving. If a company has equivalent data concerning this chemical or has access to such data, EPA recommends that the company consider submitting the data to the Agency through the HPV Challenge Program in the form of a robust summary, thus allowing the data to become public.

We will post your letter, accompanied by our reply, on the ChemRTK website as soon as possible. Should you have any questions pertaining to this response, please contact Diane Sheridan at (202) 564-4770. If you have general questions concerning the HPV Challenge Program, please submit them through the ChemRTK website comment button or through the TSCA Assistance Information Service (TSCA Hotline) at (202) 554-1404. The TSCA Hotline can also be reached via e-mail at tsca-hotline@epa.gov.

Sincerely,

Wardner G. Penberthy
Acting Director
Chemical Control Division

cc: AR201